IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 1ST DECEMBER 2006 / 10TH AGRAHAYANA 1928

Crl.MC.No. 1202 of 2004(A)

CP.37/2004 of JUDL.MAGISTRATE OF FIRST CLASS-III, PUNALUR

.....

PETITIONER: 2ND ACCUSED:

VASANTHAKUMARI, D/O. KUNJU PILLA. K.,
KOLLANTAZHIKATHU PADINJATTATHIL,
PATTATHANAM KARA, VADAKKEVILA VILLAGE,
KOLLAM TALUK.

BY ADV. SRI.V.N.ACHUTHA KURUP (SR.)

RESPONDENTS: COMPLAINANT:

STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.PUZHAKKARA MUHAMMED

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 01/12/2006, ALONG WITH CRMC NO. 1203 OF 2004
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.Nos.1202 of 2004 and 1203 of 2004

Dated this the 1st day of December 2006

O R D E R

The petitioner is the second accused in two identical prosecutions initiated by the respondent through its excise officials under Section 57(a) of the Kerala Abkari Act. The petitioner is the licensee in respect of toddy shops No.14 and 15 of Pathanapuram Excise Range. On 03/01/2001, at different points of time, the excise officials went to shops 14 and 15 of which the petitioner is the licensee and drew samples of toddy, which was kept for sale. Samples of toddy collected were sent to the chemical examiner and the chemical examiner submitted reports, which showed that the toddy samples contained 8.69% and 9.79% of ethyl alcohol.

2. Crime was registered and final report was filed on these precise allegations. The learned counsel for the petitioner submits that even if the entire allegations were accepted, no offence under Section 57(a) of the Kerala Abkari Act will be revealed in as much as presence of ethyl alcohol in toddy is perfectly justified and there is no upper limit of the ethyl alcohol prescribed under any of the relevant rules at the relevant point of time. Rule 9 of the Kerala Abkari Shops Disposal Rules 2002 was not in force at the relevant time and there was no specific embargo against the upper limit of ethyl alcohol which

could be found to be present in the toddy offered for sale. In as much as ethyl alcohol cannot be said to be a foreign substance in toddy, Section 57(a) cannot have any application, it is contended. The learned counsel for the petitioner points out that paragraph 6(a) Chapter 5 volume 2 of the Kerala Excise Manual suggests that in fermented liquor like toddy, presence of ethyl alcohol upto 12% is perfectly legal. In these circumstances, the learned counsel for the petitioner submits that in any view of the matter, these prosecutions are liable to be quashed in as much as the allegations raised even if accepted in toto, do not reveal any culpable offence.

3. The learned counsel for the petitioner was requested to take instructions. The learned Public Prosecutor, after taking instructions, concedes that at the relevant point of time, there was no stipulation of law which prescribed that presence of ethyl alcohol in toddy to an extent of 8.69% and 9.79% is an offence. There is no allegation that the alcohol found present was not self generated or was added to toddy. The learned Public Prosecutor does not make any attempt to support the charge.

4. It follows from the above discussions that the petitioner does not deserve to stand in trauma of these prosecutions any further.

5. These Crl.M.Cs are in these circumstances allowed. All further proceedings in pursuance of crime Nos.43/01 and 44/01 of Pathanapuram excise range against the petitioner are hereby quashed.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006